



## **Council Communication**

**TO:** HONORABLE MAYOR AND COUNCILMEMBERS

**FROM:** SUSAN D. GOODWIN, CURTIS, GOODWIN, SULLIVAN, UDALL & SCHWAB, PLC, SPECIAL COUNSEL

**THROUGH:** PATRICK BANGER, TOWN MANAGER

**MEETING DATE:** AUGUST 1, 2013

**SUBJECT:** HERITAGE MARKETPLACE – ASSIGNMENT FROM LGE CORPORATION TO MD HERITAGE, LLC

**STRATEGIC INITIATIVE:** N/A

**LEGAL REVIEW**

☒ Complete

☐ N/A

**FINANCIAL REVIEW**

☐ Complete

☐ N/A

### **RECOMMENDED MOTION**

**MOTION TO APPROVE THE CONSENT TO ASSIGNMENT AND ASSUMPTION AGREEMENT BETWEEN LGE CORPORATION AND MD HERITAGE, LLC.**

### **BACKGROUND/DISCUSSION**

In 2006 the Town of Gilbert issued a request for proposals for the purchase and redevelopment of a site located at the northwest corner of Gilbert Road and Vaughn Avenue in downtown Gilbert. Heritage Marketplace, L.L.C. was selected as the developer for the project. Gilbert and Heritage Marketplace, L.L.C. entered into a Development and Disposition Agreement dated September 25, 2007 ("Agreement"). That Agreement was later assigned to Sonoran Development Partners, LLC. Economic conditions have delayed the development of the project, but in December 2012 the Council approved the Third Amendment to the Heritage Marketplace Development and Disposition Agreement that, among

other things, approved the assignment of the Agreement from Sonoran Development Partners, LLC to LGE Corporation. LGE Corporation requests that a further assignment be made from LGE Corporation to MD Heritage, LLC. MD Heritage, LLC is a new single purpose entity formed to develop Heritage Marketplace. MD Heritage, LLC was formed by David E. Sellers of LGE Design Build (the principal in LGE Corporation, the assignor) and Mike Anderson of MJA Investments. MD Heritage is a 50-50 joint venture between David Sellers and Mike Anderson.

Paragraph 6.18 of the Agreement requires that an assignee have "experience and financial capacity to develop and operate a Class A office complex/mixed-use retail/restaurant project consistent with the intent of the Restated Agreement." MD Heritage, LLC has provided the attached information in support of its experience and financial capacity to develop and operate the Heritage Marketplace as provided in the Agreement. Due to vacation schedules, at the deadline for submittal of this item to the Town Clerk, staff has not been able to verify that the assignee meets the qualification requirements set forth in the Agreement. Staff will present its findings at the August 1 meeting.

The consent to the assignment was reviewed for form by Susan D. Goodwin, Curtis, Goodwin, Sullivan, Udall, and Schwab, PLC, Special Counsel.

### **FINANCIAL IMPACT**

None

### **STAFF RECOMMENDATION**

Approve the Consent to Assignment and Assumption Agreement Between LGE Corporation and MD Heritage, LLC.

Respectfully submitted,

Susan D. Goodwin  
Curtis, Goodwin, Sullivan, Udall, and Schwab, PLC  
Special Counsel

Attachments and Enclosures: MD Heritage Submittal in Support of Assignment  
Assignment and Assumption Agreement

## **ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("**Assignment**"), is made effective \_\_\_\_\_, 2013 ("**Effective Date**"), by and between LGE Corporation ("**Assignor**") and MD Heritage, LLC ("**Assignee**").

In consideration of the mutual covenants contained herein and other good and sufficient consideration, the parties hereto agree as follows:

1. Assignor hereby assigns to Assignee all of Assignor's rights and duties under the Third Amendment and Restatement of the Development and Disposition Agreement (the "**Restated Agreement**"), the Real Estate Purchase Contract attached to the Restated Agreement as Exhibit C (the "**Purchase Contract**"), the Development and Disposition Agreement, and any other agreement known of between the Assignor and the Town of Gilbert, Arizona, an Arizona municipal corporation related to the Property as defined in the Development and Disposition Agreement (collectively the "**Development Agreements**").

2. Pursuant to Section 6.18 of the Restated Agreement it was the intent of the of the Town of Gilbert and Assignor that any assignee of the Restated Agreement shall have the experience and financial capacity to develop and operate a Class A office complex/mixed-use retail/restaurant project consistent with the intent of the Restated Agreement. The Assignee hereby represents to the Assignor that it (through its principals) has the experience and financial capacity to develop and operate a Class A office complex/mixed-use retail/restaurant project consistent with the intent of the Restated Agreement.

3. Assignee hereby assumes all of the rights, duties, obligations, liabilities, and responsibilities of Assignor under the Development Agreements for the acts and omissions of Assignor known and unknown, for all purposes and agrees that this assignment from Assignor to Assignee shall not permit Assignee to take any position or exercise any right which Assignor could not have exercised.

4. Assignee shall indemnify, defend and save Assignor harmless from and against any and all liabilities, obligations, costs, expenses, claims, actions and damages which have arisen under the Development Agreements prior to the date of this Assignment or may arise under the Development Agreements.

5. This Assignment shall be construed under the laws of the State of Arizona without regard to conflicts of law provisions.

6. This Assignment may be modified only in writing, signed by Assignor and Assignee, or their respective heirs, successors or assigns.

7. This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date first written above.

**ASSIGNOR:**

LGE CORPORATION, an Arizona corporation

By: \_\_\_\_\_  
Name: David E. Sellers  
Title: President

**ASSIGNEE:**

MD Heritage, LLC, an Arizona limited liability company

By: \_\_\_\_\_  
Name: Michael Anderson  
Title: Manager

## **CONSENT TO ASSIGNMENT**

Pursuant to Section 6.18 of the Restated Agreement it was the intent of the of the Town of Gilbert and Assignor that any assignee of the Restated Agreement shall have the experience and financial capacity to develop and operate a Class A office complex/mixed-use retail/restaurant project consistent with the intent of the Restated Agreement. The Assignee hereby represents to the Town of Gilbert that it (through its principals) has the experience and financial capacity to develop and operate a Class A office complex/mixed-use retail/restaurant project consistent with the intent of the Restated Agreement. Town of Gilbert, Arizona, an Arizona municipal corporation, hereby consents to the foregoing Assignment assigning the Development Agreements from LGE Corporation to MD Heritage, LLC, an Arizona limited liability company.

### **TOWN OF GILBERT:**

Town of Gilbert, Arizona, an Arizona municipal corporation

By: \_\_\_\_\_

Name: John W. Lewis

Title: Mayor

ATTEST:

\_\_\_\_\_  
Catherine Templeton, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Curtis, Goodwin, Sullivan, Udall & Schwab, PLC  
Special Counsel

### **ASSIGNEE:**

MD Heritage, LLC, an Arizona limited  
liability company

By: \_\_\_\_\_

Name: Michael Anderson

Title: Manager



July 9, 2013

#### MD Heritage LLC

MD Heritage LLC is a single purpose entity formed to develop Heritage Marketplace in historic Downtown Gilbert's Heritage District. MD Heritage will be the entity that implements all development aspects of Heritage Marketplace. MD Heritage LLC has been formed by two very experienced commercial real estate development veterans, David E. Sellers of LGE Design Build and Mike Anderson of MJA Investments. David and Mike have jointly purchased four (4) properties during the past 12 months with a collective value of over \$25 million dollars. All projects on which David and Mike partner are 50/50 joint ventures with David handling all development/re-development, construction and re-positioning of the property and Mike handling all financing, lending coordination and property maintenance. MD Heritage LLC is a 50-50 joint venture with Mike as the Managing Member.

#### David E. Sellers

David E. Sellers is President of LGE Design Build based in Phoenix, AZ. LGE is a full service design / build general contracting and development company with current annual revenues in excess of \$50 million dollars. LGE has designed / built over 700 projects Valley-wide in the past 19 years. LGE has won numerous industry accolades including several in 2012 such as Top Medical Development by AZRE Magazine, Top Industrial Build to Suit by NAIOP, and Talk of the Town by Arizona Business Journal along with being Arizona's Top Design Build Company. LGE has developed on it's own behalf over 3.5 million SF of office, industrial and retail project. (See the LGE website at [www.lgedesignbuild.com](http://www.lgedesignbuild.com) for additional information about David's company.)

#### Mike Anderson

Mike Anderson has been in the commercial real estate business since 1985. His son Bret joined the company as both an owner and property manager in 2008. Together they have owned, managed or built over forty office, medical, retail and apartment buildings in twenty seven locations in five states. After successfully marketing all of their Phoenix properties prior to 2007, Mike and Bret are currently in the process of purchasing new projects and partnering in the development of new projects to re-establish their presence in the Phoenix market. Their recent acquisitions include (4) purchased in JV with LGE with a combined value of over \$25 million dollars. Mike's experience and success in obtaining financing, developing, managing and marketing residential and commercial projects establish him as a proven partner who brings his own special expertise to the implementation of Heritage Marketplace.

The Andersons have purchased 40 Phoenix buildings in a separate LLC's and have closed over 97% of the escrows that were opened.

As one of the major focuses of their business they are also committed to using their time, talent and resources to help orphan children in need around the world.